

RSPA-98-4957-13
PAPERWORK REDUCTION ACT SUBMISSION

DEPT. OF TRANSPORTATION

Please read the instruction before completing the form. For additional forms or assistance in completing this form, contact your agency's Paperwork Clearance Officer. Send two copies of this form, the collection instrument to be reviewed, the Supporting statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW Washington DC 20503.

<p>1. Agency/Subagency originating request U.S. DOT RSPA</p>	<p>2. OMB Control Number a. <u>2137-0587</u> b. <input type="checkbox"/> None</p>
<p>3. Type of information collection (check one) a. <input type="checkbox"/> New collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input checked="" type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change, of a previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change, of a previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number <i>For b-f, note item A2 of Supporting Statement instructions</i></p>	<p>4. Type of review requested (check one) a. <input checked="" type="checkbox"/> Regular b. <input type="checkbox"/> Emergency - Approval requested by: ____/____/____ c. <input type="checkbox"/> Delegated</p> <p>5. Small entities Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p> <p>6. Requested expiration date a. <input type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other Specify: ____/____/____</p>
<p>7. Title <u>Alcohol Misuse Prevention Program</u></p>	
<p>8. Agency from number(s) (if applicable)</p>	
<p>9. Keywords <u>Alcohol Abuse, Pipeline Safety, Alcoholism</u></p>	
<p>10. Abstract <u>Alcohol abuse has been recognized by the Federal government as a threat to safety. This program requires pipeline operators to keep records on this</u></p>	
<p>11. Affected public (Mark primary with "P" and all others that apply with "X") a. <input checked="" type="checkbox"/> Individuals or households d. <input type="checkbox"/> Farms b. <input checked="" type="checkbox"/> Business or other-for-profit e. <input type="checkbox"/> Federal Government c. <input type="checkbox"/> Not-for-profit institutions f. <input type="checkbox"/> State, Local or Tribal Government</p>	<p>12. Obligation to respond (Mark Primary with "P" and all others that apply with "X") a. <input type="checkbox"/> Voluntary b. <input checked="" type="checkbox"/> Required to obtain or retain benefits c. <input checked="" type="checkbox"/> Mandatory</p>
<p>13. Annual Recordkeeping and reporting burden <u>1,713</u> a. Number of respondents <u>1,713</u> b. Total annual responses 1. Percentage of these responses collected electronically <u>33.3</u> % c. Total annual hours requested <u>10,378</u> d. Current OMB inventory <u>10,378</u> e. Difference (+/-) <u>0</u> f. Explanation of difference 1. Program change (+/-) _____ 2. Adjustment (+/-) _____</p>	<p>14. Annual reporting and recordkeeping cost burden (in thousands of dollars) a. Total annualized capital/startup costs _____ b. Total annual cost (O&M) _____ c. Total annualized cost requested _____ d. Current OMB inventory _____ e. Difference _____ f. Explanation of difference 1. Program change _____ 2. Adjustment _____</p>
<p>15. Purpose of information collection (Mark primary with "P" and all others that apply with "X") a. <input type="checkbox"/> Application of benefits e. <input type="checkbox"/> Program planning or management b. <input type="checkbox"/> Program evaluation f. <input type="checkbox"/> Research c. <input type="checkbox"/> General purpose statistics g. <input checked="" type="checkbox"/> Regulatory, compliance d. <input type="checkbox"/> Audit</p>	<p>16. Frequency of recordkeeping or reporting (check all that apply) a. <input checked="" type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party discussions c. <input checked="" type="checkbox"/> Reporting 1. <input type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input checked="" type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input checked="" type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe) _____</p>
<p>17. Statistical methods Does this information collection employ statistical methods? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No</p>	<p>18. Agency contact (person who can best answer questions regarding the content of this submission) Name: <u>Marvin Felt</u> Phone: <u>202-366-6205</u></p>

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal agency, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.0.

NOTE:: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320.8 (b) (3), appear at the end of the instructions. *The certification is to be made with reference to those regulatory provisions as set forth in the instructions.*

The following is a summary of the topics, regarding the proposed collection of information, that the certification covers :

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It uses plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention periods for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8 (b) (3):
 - (i) Why the information is being collected;
 - (ii) Use of information;
 - (iii) Burden estimate;
 - (iv) Nature of response (voluntary, required for a benefit, or mandatory;
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned an allocated resources for the efficient and effective management and use of the information to be collected (see note in Item 19 of the instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of these provisions, identify the item below and explain the reason in Item 18 of the Supporting Statement.

Signature of Senior Official or designee

Date

Supporting Statement
Alcohol Misuse Prevention Program for Pipeline Operators

1. Explain the circumstances that make the collection of information necessary. Include identification of any legal or administrative requirements that necessitate collection.

Alcohol misuse has been identified by the Federal Government as a significant danger to safety in the United States today and it is reasonable to assume that the problem exists in the pipeline industry. The potential harmful effect of alcohol misuse on safe pipeline operators warrants imposing comprehensive alcohol misuse testing regulations on the pipeline industry. These rules (49 CFR Part 199) require information collection in the form of an alcohol misuse prevention plan and recordkeeping.

2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The Office of Pipeline Safety (OPS) and cooperating State agencies use the information to monitor alcohol misuse programs of operators with the objective of ensuring a transportation program that prevents alcohol misuse related employee-caused accidents.

3. Describe whether, and to what extent the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decisions for adopting this means of collection. Also describe any consideration of using information technology to reduce the burden.

OPS has developed a system for providing the reports by computer disk. One-third of operator choose this method of reporting.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for purposed describe in item 2 above.

No similar information exists.

5. If the collection of information involves small businesses or other small entities, describe the methods used to minimize burden.

The regulations exempt operators of master meter systems and liquefied petroleum operators (LPG) from the alcohol testing program. These operators constitute a significant proportion of the small operators in this business. The burden on the remaining small operators is reduced by minimizing the amount of information that is required.

6. Describe the consequence to Federal Program of policy activities if the collection were conducted less frequently, as well as any technical or legal obstacles to reducing the burden.

The frequency of collection of the alcohol testing data is one time for each of the operators subject to the reporting requirements. The frequency of recordkeeping is on an event basis as operators conduct tests (post-accident and reasonable suspicion), rehabilitation, and training. The collection may not be done less frequently.

7. Explain any circumstances that require the collection to be conducted in a manner:

requiring respondents to report information to the agency more than quarterly;

requiring respondents to prepare a written response to a collection in fewer than 30 days after receipt of it;

requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;

in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;

requiring the use of a statistical data classification that has not been reviewed and approved by OMB;

that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or

requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

Describe the consequence to Federal program or policy activities if the collection were conducted¹ less frequently.

The information required is not in conflict with these guidelines.

8. If applicable provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d) soliciting comments on the information collection prior to OMB. Summarize public comments received in response to

that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, clarity of instructions and recordkeeping, disclosure, or reporting format (if any), and on the data elements to be reported.

During the rulemaking process on the pipeline alcohol testing program, members of the affected pipeline industries and the public were given an opportunity to express their views. Additionally, three public meetings were held. Also a “pilot project” was developed and pipeline operators were asked to participated. A copy of the summarized findings and comments regarding the information collection can be found in the RSPA docket number PS-129.

9. Explain any decision to provide any payment or gift to respondent, respondents other than remuneration of contractors or grantee.

No payment is provided.

10. Describe any assurance of confidentiality provided and the basis for the assurance in statute, regulation, or agency policy.

The information reported is in statistical form and does not provide the names of individuals therefore there is no privacy concerns.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private.

There are no questions of a sensitive nature.

12. Provide estimates of the burden of the collection of information.

Since the alcohol plans have already been established, the only costs to the operators are the collection and the maintenance of records cost. The average collection and record maintenance time per company is estimated to be 6 hours.

$1,713 \text{ companies} \times 6 \text{ hours} = 10,278 \text{ hours} \times \$25 = \$256,950.$

13. Provide an estimate of the annual cost to respondents or recordkeepers resulting from the collection of information.

There are no additional costs beyond the paperwork expenses.

14. Provide: estimates of annualized cost to the Federal Government.

Validation of 1,713 reports at 45min .	856 hrs.
Reverification of 20% of reports at 30min .	171 hrs.
Input reports into data bank at 20 min.	285 hrs.
Analysis of data	<u>75 hrs.</u>
Total	1,387 hrs.

1387 staff hours x \$25 = \$34,675.

15. Explain reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.

There is no change.

16. For the collections of information whose results are planned to be published for statistical use, outline plans for tabulation, statistical analysis, and publication.

There are no plans for publication.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

RSPA is not seeking such approval.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions", of OMB form 83-I.

There is no exception.

information regarding an individual's drug testing results or rehabilitation may be released only upon the written consent of the individual, except that such information must be released regardless of consent to the Administrator or the representative of a state agency upon request as part of an accident investigation. Statistical data related to drug testing and rehabilitation that is not name-specific and training records must be made available to the Administrator or the representative of a state agency upon request.

[53 FR 47096, Nov. 21, 1966, as amended at 58 FR 68260, Dec. 23, 1993]

§ 199.25 Reporting of anti-drug testing results.

(a) Each large operator (having more than 50 covered employees) shall submit an annual MIS report to RSPA of its anti-drug testing results in the form and manner prescribed by the Administrator, not later than March 15 of each year for the prior calendar year (January 1 through December 31). The Administrator shall require by written notice that small operators (50 or fewer covered employees) not otherwise required to submit annual MIS reports to prepare and submit such reports to RSPA.

(b) Each report, required under this section, shall be submitted to the Office of Pipeline Safety Compliance (OPS), Research and Special Programs Administration, Department of Transportation, room 2335, 400 Seventh Street, SW., Washington, DC 20590.

(c) Each report shall be submitted in the form and manner prescribed by the Administrator. No other form, including another DOT Operating Administration's MIS form, is acceptable for submission to RSPA.

(d) Each report shall be signed by the Operator's anti-drug manager or designated representative. RSPA will allow the operator the option of sending the report on the computer disk provided by RSPA. If this option is used, a signature page attesting to the validity of the information on the computer disk must be sent to the address in paragraph (b) of this section.

(e) Each operator's report, with verified positive test results or refusals to

Research and Special Programs Administration, DOT

test shall include all of the following informational elements:

(1) Number of covered employees.

(2) Number of covered employees subject to testing under the anti-drug rules of another operating administration.

(3) Number of specimens collected by type of test.

(4) Number of positive test results, verified by a Medical Review Officer (MRO), by type of test and type of drug.

(5) Number of employee action(s) taken following verified positive(s), by type of action(s).

(6) Number of negative tests reported by an MRO by type of test.

(7) Number of persons denied a position as a covered employee following a verified positive drug test.

(8) Number of covered employees, returned to duty during this reporting period after having failed or refused a drug test required under the RSPA rule.

(9) Number of covered employees with tests verified positive by an MRO for multiple drugs.

(10) Number of covered employees who refused to submit to a random or non-random (post-accident, reasonable cause, return-to-duty, or follow-up) drug test and the action taken in response to each refusal.

(11) Number of supervisors who have received required initial training during the reporting period.

(f) Each operator's report with only negative test results shall include all of the following informational elements:

(1) Number of covered employees.

(2) Number of covered employees subject to testing under the anti-drug rules of another operating administration.

(3) Number of specimens collected by type of test.

(4) Number of negative tests reported by an MRO by type of test.

(5) Number of covered employees who refused to submit to a random or non-random (post-accident, reasonable cause, return-to-duty, or follow-up) drug test and the action taken in response to each refusal.

§ 199.205

(6) Number Of supervisors who have received required initial training during the reporting period.

[58 FR 66261, Dec. 23, 1993, as amended by Amdt. 199-14, 61 FR 65365, Dec. 12, 1996]

Subpart B-Alcohol Misuse Prevention Program

SOURCE: Amdt. 199-9, 59 FR 7430, Feb. 15, 1994, unless otherwise noted.

§ 199.200 Purpose.

The purpose of this subpart is to establish programs designed to help prevent accidents and injuries resulting from the misuse of alcohol by employees who perform covered functions for operators of certain pipeline facilities subject to parts 192, 193, or 195 of this chapter.

§ 199.201 Applicability.

This subpart applies to gas, hazardous liquid and carbon dioxide pipeline operators and liquefied natural gas operators subject to parts 192, 193, or 195 of this chapter. However, this subpart does not apply to operators of master meter systems defined in § 191.3 or liquefied petroleum gas (LPG) operators as discussed in 9192.11 of this chapter.

§ 199.202 Alcohol misuse plan.

Each operator shall maintain and follow a written alcohol misuse plan that conforms to the requirements of this subpart and the DOT procedures in part 40 of this title. The plan shall contain methods and procedures for compliance with all the requirements of this subpart, including required testing, recordkeeping, reporting, education and training elements.

§ 128.202 Alcohol testing procedures.

Each operator shall ensure that all alcohol testing conducted under this subpart complies with the procedures set forth in part 40 of this title. The provisions of 49 CFR part 40 that address alcohol testing are made applicable to operators by this subpart.

§ 199.206 Definitions.

As used in this subpart:

Accident means an incident reportable under part 191 of this chapter involving gas pipeline facilities or LNG facilities, or an accident reportable under part 195 of this chapter involving hazardous liquid or carbon dioxide pipeline facilities.

Administrator means the Administrator of the Research and Special Programs Administration (RSPA), or any person who has been delegated authority in the matter concerned.

Alcohol means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weight alcohols including methyl or isopropyl alcohol.

Alcohol concentration (or content) means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this subpart.

Alcohol use means the consumption of any beverage, mixture, or preparation, including any medication, containing alcohol.

Confirmation test means a second test, following a screening test with a result 0.02 or greater, that provides quantitative data of alcohol concentration.

Consortium means an entity, including a group or association of employers, recipients, or contractors, that provides alcohol testing as required by this subpart or other DOT alcohol testing rules and that acts on behalf of the operators.

Covered employee means a person who performs on a pipeline or at an LNG facility an operation, maintenance, or emergency-response function regulated by parts 192, 193, or 195 of this chapter. **Covered employee** and **individual** or **individual to be tested** have the same meaning for the purposes of this subpart. The term covered employee does not include clerical, truck driving, accounting, or other functions not subject to parts 192, 193, or 195. The person may be employed by the operator, be a contractor engaged by the operator, or be employed by such a contractor.

Covered function (safety-sensitive function) means an operation, maintenance, or emergency-response function that is performed on a pipeline or LNG facility and the function is regulated by parts 192, 193, or 195.

DOT agency An agency (or operating administration) of the United States Department of Transportation administering regulations requiring alcohol testing (14 CFR parts 61, 63, 65, 121, 135; 49 CFR parts 199, 219, 362, and 654) in accordance with part 40 of this title.

Employer or operator means a person who owns or operates a pipeline or LNG facility subject to parts 192, 193, or 195 of this chapter.

Performing (a covered function): An employee is considered to be performing a covered function (safety-sensitive function) during any period in which he or she is actually performing, ready to perform, or immediately available to perform such covered functions.

Refuse to submit (to an alcohol test) means that a covered employee fails to provide adequate breath for testing without a valid medical explanation after he or she has received notice of the requirement to be tested in accordance with the provisions of this subpart, or engages in conduct that clearly obstructs the testing process.

Screening test means an analytical procedure to determine whether a covered employee may have a prohibited concentration of alcohol in his or her system.

State agency means an agency of any of the several states, the District of Columbia, or Puerto Rico that participates under the pipeline safety laws (49 U.S.C. 60101 et seq.).

[Amdt. 199-9, 59 FR 7430, Feb. 15, 1994, as amended by Amdt. 199-13, 61 FR 18519, Apr. 26, 1996; 61 FR 37224, July 17, 1996]

§ 199.207 Preemption of State and local laws.

(a) Except as provided in paragraph (b) of this section, this subpart preempts any State or local law, rule, regulation, or order to the extent that:

(1) Compliance with both the State or local requirement and this subpart is not possible;

(2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this subpart; or

(3) The State or local requirement is a pipeline safety standard applicable to interstate pipeline facilities.

(b) This subpart shall not be construed to preempt provisions of State

DOT agency An agency (or operating **administration**) of the United States **Department** of Transportation **administering** regulations requiring alcohol testing (14 CFR parts 61, 63, 65, 121, **135**; 9 CFR parts 199, 219, 362, and 654) in **accordance** with part 40 of this title.

Employer or operator means a person who owns or operates a pipeline or **NG** facility subject to parts 192, 193, or 195 of this chapter.

Performing (a covered function): An **employee** is considered to be **performing** a covered function (safety-sensitive function) during any period in which he or she is actually performing, ready to **perform**, or immediately available to **perform** such covered functions.

Refuse to submit (to an alcohol test) means that a covered employee fails to **provide** adequate breath for testing **without** a valid medical explanation after he or she has received notice of the requirement to be tested in **accordance** with the provisions of this subpart, or engages in conduct that clearly obstructs the testing process.

Screening test means an analytical procedure to determine whether a covered employee may have a prohibited concentration of alcohol in his or her system.

State agency means an agency of any of the several states, the District of Columbia, or Puerto Rico that participates under the pipeline safety laws (49 U.S.C. 60101 *et seq.*).

[Amdt. **199-9**, 59 FR 7430, Feb. 15, 1994, as amended by Amdt. 199-13, 61 FR 18519, Apr. 26, 1996; 61 FR 37224, July 17, 1996]

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(1) Compliance with both the State or local requirement and this subpart is not possible;

(2) Compliance with the State or local requirement is an obstacle to the accomplishment and execution of any requirement in this subpart; or

(3) The State or local requirement is a pipeline safety standard applicable to interstate pipeline facilities.

(b) This subpart shall not be construed to preempt provisions of State

criminal law that impose sanctions for reckless conduct leading to actual loss of life, injury, or damage to property, whether the provisions apply specifically to transportation employees or employers or to the general public.

§ 199.209 Other requirements imposed by operators.

Except as expressly provided in this subpart, nothing in this subpart shall be construed to affect the authority of operators, or the rights of employees, with respect to the use or possession of alcohol, including authority and rights with respect to alcohol testing and rehabilitation.

§ 199.211 Requirement for notice.

Before performing an alcohol test under this subpart, each operator shall notify a covered employee that the alcohol test is required by this subpart. No operator shall falsely represent that a test is administered under this subpart.

§ 199.213 Starting date for alcohol testing programs

(a) **Large operators.** Each operator with more than fifty covered employees on February 15, 1994 shall implement the requirements of this subpart beginning on January 1, 1995.

(b) **Small operators.** Each operator with fifty or fewer covered employees on February 15, 1994 shall implement the requirements of this subpart beginning on January 1, 1996.

(c) All operators commencing operations after February 15, 1994 shall have an alcohol misuse program that conforms to this subpart by January 1, 1996, or by the date an operator begins operations, whichever is later.

§ 199.215 Alcohol concentration.

Each operator shall prohibit a covered employee from reporting for duty or remaining on duty requiring the performance of covered functions while having an alcohol concentration of 0.04 or greater. No operator having actual knowledge that a covered employee has an alcohol concentration of 0.04 or greater shall permit the employee to perform or continue to perform covered functions.

§ 198.217 On-duty use.

Each operator shall prohibit a covered employee from using alcohol while performing covered functions. No operator having actual knowledge that a covered employee is using alcohol while performing covered functions shall permit the employee to perform or continue to perform covered functions.

§ 199.219 Pre-duty use.

Each operator shall prohibit a covered employee from using alcohol within four hours prior to performing covered functions, or, if an employee is called to duty to respond to an emergency, within the time period after the employee has been notified to report for duty. No operator having actual knowledge that a covered employee has used alcohol within four hours prior to performing covered functions or within the time period after the employee has been notified to report for duty shall permit that covered employee to perform or continue to perform covered functions.

§ 199.221 Use following an accident.

Each operator shall prohibit a covered employee who has actual knowledge of an accident in which his or her performance of covered functions has not been discounted by the operator as a contributing factor to the accident from using alcohol for eight hours following the accident, unless he or she has been given a post-accident test under § 199.225(a), or the operator has determined that the employee's performance could not have contributed to the accident.

§ 199.223 Refusal to submit to a required alcohol test.

Each operator shall require a covered employee to submit to a post-accident alcohol test required under § 199.225(a), a reasonable suspicion alcohol test required under § 199.225(b), or a follow-up alcohol test required under § 199.225(d). No operator shall permit an employee who refuses to submit to such a test to perform or continue to perform covered functions.

§ 199.225 Alcohol tests required.

Each operator shall conduct the following types of alcohol tests for the presence of alcohol:

(a) *Post-accident.* (1) As soon as practicable following an accident, each operator shall test each surviving covered employee for alcohol if that employee's performance of a covered function either contributed to the accident or cannot be completely discounted as a contributing factor to the accident. The decision not to administer a test under this section shall be based on the operator's determination, using the best available information at the time of the determination, that the covered employee's performance could not have contributed to the accident.

(2)(i) If a test required by this section is not administered within 2 hours following the accident, the operator shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by paragraph (a) is not administered within 8 hours following the accident, the operator shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test.

(ii) For the years stated in this paragraph, employers who submit MIS reports shall submit to RSPA each record of a test required by this section that is not completed within 8 hours. The employer's records of tests that could not be completed within 8 hours shall be submitted to RSPA by March 15, 1998; March 15, 1997; and March 15, 1998; for calendar years 1995, 1998, and 1997, respectively. Employers shall append these records to their MIS submissions. Each record shall include the following information:

(A) Type of test (reasonable suspicion/post-accident);

(B) Triggering event (including date, time, and location);

(C) Employee category (do not include employee name or other identifying information);

(D) Reason(s) test could not be completed within 8 hours; and

(E) If blood alcohol testing could have been completed within eight hours, the name, address, and tele-

phone number of the testing site where blood testing could have occurred.

(3) A covered employee who is subject to post-accident testing who fails to remain readily available for such testing, including notifying the operator or operator representative of his/her location if he/she leaves the scene of the accident prior to submission to such test, may be deemed by the operator to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

(b) *Reasonable suspicion testing.* (1) Each operator shall require a covered employee to submit to an alcohol test when the operator has reasonable suspicion to believe that the employee has violated the prohibitions in this subpart.

(2) The operator's determination that reasonable suspicion exists to require the covered employee to undergo an alcohol test shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. The required observations shall be made by a supervisor who is trained in detecting the symptoms of alcohol misuse. The supervisor who makes the determination that reasonable suspicion exists shall not conduct the breath alcohol test on that employee.

(3) Alcohol testing is authorized by this section only if the observations required by paragraph (b)(2) of this section are made during, just preceding, or just after the period of the work day that the employee is required to be in compliance with this subpart. A covered employee may be directed by the operator to undergo reasonable suspicion testing for alcohol only while the employee is performing covered functions; just before the employee is to perform covered functions; or just after the employee has ceased performing covered functions.

ne number of the testing site where
ad testing could have occurred.

(i) A covered employee who is subject post-accident testing who fails to re-in readily available for such testing, including notifying the operator or operator representative of his/her location if he/she leaves the scene of the accident prior to submission to such test, may be deemed by the operator to have refused to submit to testing. Nothing in this section shall be construed to require the delay of necessary medical attention for injured people following an accident or to prohibit a covered employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

(b) *Reasonable suspicion testing.* (1) Each operator shall require a covered employee to submit to an alcohol test when the operator has reasonable suspicion to believe that the employee has violated the prohibitions in this subpart.

(2) The operator's determination that reasonable suspicion exists to require the covered employee to undergo an alcohol test shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the employee. The required observations shall be made by a supervisor who is trained in detecting the symptoms of alcohol misuse. The supervisor who makes the determination that reasonable suspicion exists shall not conduct the breath alcohol test on that employee.

(3) Alcohol testing is authorized by this section only if the observations required by paragraph (b)(2) of this section are made during, just preceding, or just after the period of the work day that the employee is required to be in compliance with this subpart. A covered employee may be directed by the operator to undergo reasonable suspicion testing for alcohol only while the employee is performing covered functions; just before the employee is directed to perform covered functions; or just after the employee has ceased performing covered functions.

(4)(i) If a test required by this section is not administered within 2 hours following the determination under paragraph (b)(2) of this section, the operator shall prepare and maintain on file a record stating the reasons the test was not promptly administered. If a test required by this section is not administered within 8 hours following the determination under paragraph (b)(2) of this section, the operator shall cease attempts to administer an alcohol test and shall state in the record the reasons for not administering the test. Records shall be submitted to RSPA upon request of the Administrator.

(ii) For the years stated in this paragraph, employers who submit MIS reports shall submit to RSPA each record of a test required by this section that is not completed within 8 hours. The employer's records of tests that could not be completed within 8 hours shall be submitted to RSPA by March 15, 1998; March 15, 1997; and March 15, 1998; for calendar years 1995, 1998, and 1997, respectively. Employers shall append these records to their MIS submissions. Each record shall include the following information:

(A) Type of test (reasonable suspicion/post-accident);

(B) Triggering event (including date, time, and location);

(C) Employee category (do not include employee name or other identifying information);

(D) Reason(s) test could not be completed within 8 hours; and

(E) If blood alcohol testing could have been completed within eight hours, the name, address, and telephone number of the testing site where blood testing could have occurred.

(iii) Notwithstanding the absence of a reasonable suspicion alcohol test under this section, an operator shall not permit a covered employee to report for duty or remain on duty requiring the performance of covered functions while the employee is under the influence of or impaired by alcohol, as shown by the behavioral, speech, or performance indicators of alcohol misuse, nor shall an operator permit the covered employee to perform or continue to perform covered functions, until:

(A) An alcohol test is administered and the employee's alcohol concentration measures less than 0.02; or

(B) The start of the employee's next regularly scheduled duty period, but not less than 8 hours following the determination under paragraph (b)(2) of this section that there is reasonable suspicion to believe that the employee has violated the prohibitions in this subpart.

(iv) Except as provided in paragraph (b)(4)(ii), no operator shall take any action under this subpart against a covered employee based solely on the employee's behavior and appearance in the absence of an alcohol test. This does not prohibit an operator with the authority independent of this subpart from taking any action otherwise consistent with law.

(c) *Return-to-duty testing.* Each operator shall ensure that before a covered employee returns to duty requiring the performance of a covered function after engaging in conduct prohibited by §§ 199.215 through 199.223, the employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.

(d) *Follow-up testing.* (1) Following a determination under § 199.243(b) that a covered employee is in need of assistance in resolving problems associated with alcohol misuse, each operator shall ensure that the employee is subject to unannounced follow-up alcohol testing as directed by a substance abuse professional in accordance with the provisions of § 199.243(c)(2)(ii).

(2) Follow-up testing shall be conducted when the covered employee is performing covered functions; just before the employee is to perform covered functions; or just after the employee has ceased performing such functions.

(e) *Retesting of covered employees with an alcohol concentration of 0.02 or greater but less than 0.04.* Each operator shall retest a covered employee to ensure compliance with the provisions of § 199.237, if an operator chooses to permit the employee to perform a covered function within 8 hours following the

administration of an alcohol test indicating an alcohol concentration of 0.02 or greater but less than 0.04.

[Amdt. 199-9, 59 FR 7430, Feb. 15, 1994, as amended at 59 FR 62239 and 62246, Dec. 2, 1994]

§ 199.227 Retention of records.

(a) *General requirement.* Each operator shall maintain records of its alcohol misuse prevention program as provided in this section. The records shall be maintained in a secure location with controlled access.

(b) *Period of retention.* Each operator shall maintain the records in accordance with the following schedule:

(1) *Five years.* Records of employee alcohol test results with results indicating an alcohol concentration of 0.02 or greater, documentation of refusals to take required alcohol tests, calibration documentation, employee evaluation and referrals, and MIS annual report data shall be maintained for a minimum of five years.

(2) *Two years.* Records related to the collection process (except calibration of evidential breath testing devices), and training shall be maintained for a minimum of two years.

(3) *One year.* Records of all test results below 0.02 (as defined in 49 CFR part 40) shall be maintained for a minimum of one year.

(c) *Types of records.* The following specific records shall be maintained:

(1) Records related to the collection process:

(i) Collection log books, if used.

(ii) Calibration documentation for evidential breath testing devices.

(iii) Documentation of breath alcohol technician training.

(iv) Documents generated in connection with decisions to administer reasonable suspicion alcohol tests.

(v) Documents generated in connection with decisions on post-accident tests.

(vi) Documents verifying existence of a medical explanation of the inability of a covered employee to provide adequate breath for testing.

(2) Records related to test results:

(i) The operator's copy of the alcohol test form, including the results of the test.

(ii) Documents related to the refusal of any covered employee to submit to an alcohol test required by this subpart.

(iii) Documents presented by a covered employee to dispute the result of an alcohol test administered under this subpart.

(3) Records related to other violations of this subpart.

(4) Records related to evaluations:

(i) Records pertaining to a determination by a substance abuse professional concerning a covered employee's need for assistance.

(ii) Records concerning a covered employee's compliance with the recommendations of the substance abuse professional.

(5) Record(s) related to the operator's MIS annual testing data.

(6) Records related to education and training:

(i) Materials on alcohol misuse awareness, including a copy of the operator's policy on alcohol misuse.

(ii) Documentation of compliance with the requirements of § 199.231.

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol testing based on reasonable suspicion.

(iv) Certification that any training conducted under this subpart complies with the requirements for such training.

§ 199.229 Reporting of alcohol testing results.

(a) Each large operator (having more than 50 covered employees) shall submit an annual management information system (MIS) report to RSPA of its alcohol testing results in the form and manner prescribed by the Administrator, by March 15 of each year for the previous calendar year (January 1 through December 31). The Administrator may require by written notice that a small operator (50 or fewer covered employees), not otherwise required to submit annual MIS reports, submit such a report to RSPA.

(b) Each operator that is subject to more than one DOT agency alcohol rule shall identify each employee covered by the regulations of more than

(ii) Documents related to the refusal of any covered employee to submit to an alcohol test required by this subpart.

(iii) Documents presented by a covered employee to dispute the result of an alcohol test administered under this subpart.

(3) Records related to other violations of this subpart.

(4) Records related to evaluations:

(i) Records pertaining to a determination by a substance abuse professional concerning a covered employee's need for assistance.

(ii) Records concerning a covered employee's compliance with the recommendations of the substance abuse professional.

(5) Record(s) related to the operator's MIS annual testing data.

(6) Records related to education and training:

(i) Materials on alcohol misuse awareness, including a copy of the operator's policy on alcohol misuse.

(ii) Documentation of compliance with the requirements of § 199.231.

(iii) Documentation of training provided to supervisors for the purpose of qualifying the supervisors to make a determination concerning the need for alcohol testing based on reasonable suspicion.

(iv) Certification that any training conducted under this subpart complies with the requirements for such training.

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(b) Each operator that is subject to more than one DOT agency alcohol rule shall identify each employee covered by the regulations of more than

one DOT agency. The identification will be by the total number of covered employees. Prior to conducting any alcohol test on a covered employee subject to the rules of more than one DOT agency, the employer shall determine which DOT agency rule or rules authorizes or requires the test. The test result information shall be directed to the appropriate DOT agency or agencies.

(c) Each report, required under this section, shall be submitted to the Office of Pipeline Safety, Research and Special Programs Administration, Department of Transportation, room 2335, 400 Seventh Street, SW., Washington, DC 20590. RSPA will allow the operator the option of sending the report on the computer disk provided by RSPA. If this option is used, a signature page attesting to the validity of the information on the computer disk must be sent to the address in this section.

(d) Each report that contains information on an alcohol screening test result of 0.02 or greater or a violation of the alcohol misuse provisions of §§ 199.215 through 199.223 of this subpart shall be submitted on "RSPA Alcohol Testing MIS Data Collection Form" and include the following informational elements:

(1) Number of covered employees.

(2) Number of covered employees subject to testing under the alcohol misuse rule of another operating administration by each agency.

(3)(i) Number of screening tests by type of test.

(ii) Number of confirmation tests by type of test.

(4) Number of confirmation tests indicating an alcohol concentration of 0.02 or greater but less than 0.04, by type of test.

(5) Number of confirmation tests indicating an alcohol concentration of 0.04 or greater, by type of test.

(6) Number of covered employees with a confirmation test indicating an alcohol concentration of 0.04 or greater or who have violations of other alcohol misuse provisions who were returned to duty in covered positions (having complied with the recommendations of a substance abuse professional as described in §§ 199.235 and 199.243).

(7) Number of covered employees who were administered alcohol and drug tests at the same time, with both a positive drug test and an alcohol test indicating an alcohol concentration of 0.04 or greater.

(8) Number of covered employees who were found to have violated other provisions of §§ 199.215 through 199.221, and any action taken in response to the violation.

(9) Number of covered employees who refused to submit to an alcohol test required under this subpart, and the action taken in response to the refusal.

(10) Number of supervisors who have received required training during the reporting period in determining the existence of reasonable suspicion of alcohol misuse.

(e) Each report with no screening alcohol test results of 0.02, or greater or violations of the alcohol misuse provisions of §§ 199.215 through 199.223 of this subpart shall be submitted on "RSPA Alcohol Testing MIS Data Collection EZ Form" and include the following informational elements. (This "EZ" report may only be submitted if the program results meet these criteria)

(1) Number of covered employees.

(2) Number of covered employees subject to testing under the alcohol misuse rule of another operating administration identified by each agency.

(3) Number of screening tests by type of test.

(4) Number of covered employees who refused to submit to an alcohol test required under this subpart, and the action taken in response to the refusal.

(5) Number of supervisors who have received required training during the reporting period in determining the existence of reasonable suspicion of alcohol misuse.

(f) A consortium may prepare reports on behalf of individual pipeline operators for purposes of compliance with this reporting requirement. However, the pipeline operator shall sign and submit such a report and shall remain responsible for ensuring the accuracy and timeliness of each report prepared on its behalf by a consortium.

[Amdt. 199-9, 59 FR 7439, Feb. 15, 1994, as amended by Amdt. 199-14, 61 FR 65365, Dec. 12, 1996]

§ 199.231 Access to facilities and records.

(a) **Except** as required by law or expressly authorized or required in this subpart, no employer shall release covered employee information that is contained in records required to be maintained in § 199.227.

(b) A covered employee is entitled, upon written request, to obtain copies of any records pertaining to the employee's use of alcohol, including any records pertaining to his or her alcohol tests. The operator shall promptly provide the records requested by the employee. Access to a employee's records shall not be contingent upon payment for records other than those specifically requested.

(c) Each operator shall permit access to all facilities utilized in complying with the requirements of this subpart to the Secretary of Transportation, any DOT agency, or a representative of a state agency with regulatory authority over the operator.

(d) Each operator shall make available copies of all results for employer alcohol testing conducted under this subpart and any other information pertaining to the operator's alcohol misuse prevention program, when requested by the Secretary of Transportation, any DOT agency with regulatory authority over the operator, or a representative of a state agency with regulatory authority over the operator. The information shall include name-specific alcohol test results, records, and reports.

(e) When requested by the National Transportation Safety Board as part of an accident investigation, an operator shall disclose information related to the operator's administration of any post-accident alcohol tests administered following the accident under investigation.

(f) An operator shall make records available to a subsequent employer upon receipt of the written request from the covered employee. Disclosure by the subsequent employer is permitted only as expressly authorized by the terms of the employee's written request.

(g) An operator may disclose information required to be maintained under this subpart pertaining to a cov-

ered employee to the employee or the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of an alcohol test administered under this subpart, or from the operator's determination that the covered employee engaged in conduct prohibited by § 199.215 through 199.223 (including, but not limited to, a worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee).

(h) An operator shall release information regarding a covered employee's records as directed by the specific, written consent of the employee authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's consent.

§ 199.233 Removal from covered function.

Except as provided in §§ 199.239 through 199.243, no operator shall permit any covered employee to perform covered functions if the employee has engaged in conduct prohibited by §§ 199.215 through 199.223 or an alcohol misuse rule of another DOT agency.

§ 199.235 Required evaluation and testing.

No operator shall permit a covered employee who has engaged in conduct prohibited by §§ 199.215 through 199.223 to perform covered functions unless the employee has met the requirements of § 199.243.

§ 199.237 Other alcohol-related conduct.

(a) No operator shall permit a covered employee tested under the provisions of § 199.225, who is found to have an alcohol concentration of 0.02 or greater but less than 0.04, to perform or continue to perform covered functions, until:

(1) The employee's alcohol concentration measures less than 0.02 in accordance with a test administered under § 199.225(e); or

(2) The start of the employee's next regularly scheduled duty period, but

ered **employee** to the employee or the decisionmaker in a lawsuit, grievance, or other proceeding initiated by or on behalf of the individual, and arising from the results of an alcohol test administered under this subpart, or from the operator's determination that the covered employee engaged in conduct prohibited by §§ 199.215 through 199.223 (including, but not limited to, a Worker's compensation, unemployment compensation, or other proceeding relating to a benefit sought by the employee).

(h) An operator shall release information regarding a covered employee's records as directed by the specific, written consent of the employee authorizing release of the information to an identified person. Release of such information by the person receiving the information is permitted only in accordance with the terms of the employee's consent.

§ 199.233 Removal from covered function.

Except as provided in § 199.239 through 199.243, no operator shall permit any covered **employee** to perform covered functions if the employee has engaged in conduct prohibited by §§ 199.215 through 199.223 or an alcohol misuse rule of another DOT agency.

§ 199.235 Required evaluation and testing.

No operator shall permit a covered employee who has engaged in conduct prohibited by §§ 199.215 through 199.223 to perform covered functions unless the employee has met the requirements of § 199.243.

§ 199.237 Other alcohol-related conduct.

(a) No operator shall permit a covered employee tested under the provisions of § 199.225, who is found to have an alcohol concentration of 0.02 or greater but less than 0.04, to perform or continue to perform covered functions, until:

(1) The employee's alcohol concentration measures less than 0.02 in accordance with a test administered under § 199.225(e); or

(2) The start of the employee's next regularly scheduled duty period, but

not less than eight hours following administration of the test.

(b) Except as provided in paragraph (a) of this section, no operator shall take any action under this subpart against an employee based solely on test results showing an alcohol concentration less than 0.04. This does not prohibit an operator with authority independent of this subpart from taking any action otherwise consistent with law.

§ 199.239 Operator obligation to promulgate a policy on the misuse of alcohol.

(a) **General requirements.** Each operator shall provide educational materials that explain these alcohol misuse requirements and the operator's policies and procedures with respect to meeting those requirements.

(1) The operator shall ensure that a copy of these materials is distributed to each covered employee prior to start of alcohol testing under this subpart, and to each person subsequently hired for or transferred to a covered position.

(2) Each operator shall provide written notice to representatives of employee organizations of the availability of this information.

(b) **Required content.** The materials to be made available to covered employees shall include detailed discussion of at least the following:

(1) The identity of the person designated by the operator to answer covered employee questions about the materials.

(2) The categories of employees who are subject to the provisions of this subpart.

(3) Sufficient information about the covered functions performed by those employees to make clear what period of the work day the covered employee is required to be in compliance with this subpart.

(4) Specific information concerning covered employee conduct that is prohibited by this subpart.

(5) The circumstances under which a covered employee will be tested for alcohol under this subpart.

(6) The procedures that will be used to test for the presence of alcohol, protect the covered employee and the integrity of the breath testing process,

safeguard the validity of the test results, and ensure that those results are attributed to the correct employee.

(7) The requirement that a covered employee submit to alcohol tests administered in accordance with this subpart.

(8) An explanation of what constitutes a refusal to submit to an alcohol test and the attendant consequences.

(9) The consequences for covered employees found to have violated the prohibitions under this subpart, including the requirement that the employee be removed immediately from covered functions, and the procedures under § 199.243.

(10) The consequences for covered employees found to have an alcohol concentration of 0.02 or greater but less than 0.04.

(11) Information concerning the effects of alcohol misuse on an individual's health, work, and personal life; signs and symptoms of an alcohol problem (the employee's or a coworker's); and including intervening evaluating and resolving problems associated with the misuse of alcohol including intervening when an alcohol problem is suspected, confrontation, referral to any available EAP, and/or referral to management.

(c) **Optional provisions.** The materials supplied to covered employees may also include information on additional operator policies with respect to the use or possession of alcohol, including any consequences for an employee found to have a specified alcohol level, that are based on the operator's authority independent of this subpart. Any such additional policies or consequences shall be clearly described as being based on Independent authority.

§ 199.241 Training for supervisors.

Each operator shall ensure that persons designated to determine whether reasonable suspicion exists to require a covered employee to undergo alcohol testing under § 199.225(b) receive at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

Q159. 243

§ 199.243 Referral, evaluation treatment.

(a) Each covered employee who engages in conduct prohibited by §§ 199.215 through 199.223 of this subpart shall be advised of the resources available to the covered employee in evaluating and resolving problems associated with the misuse of alcohol, including the names, addresses, and phone numbers of substance abuse professionals and counseling and treatment programs.

(b) Each covered employee who engages in conduct prohibited by §§ 199.215 through 199.223 shall be evaluated by a substance abuse professional who shall determine what assistance, if any, the employee needs in resolving problems associated with alcohol misuse.

(c)(1) Before a covered employee returns to duty requiring the performance of a covered function after engaging in conduct prohibited by §§ 199.215 through 199.223 of this subpart, the employee shall undergo a return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.

(2) In addition, each covered employee identified, as needing assistance in resolving problems associated with alcohol misuse-

(i) Shall be evaluated by a substance abuse professional to determine that the employee has properly followed any rehabilitation program prescribed under paragraph (b) of this section, and

(ii) Shall be subject to unannounced follow-up alcohol tests administered by the operator following the employee's return to duty. The number and frequency of such follow-up testing shall be determined by a substance abuse professional, but shall consist of at least six tests in the first 12 months following the employee's return to duty. In addition, follow-up testing may include testing for drugs, as directed by the substance abuse professional, to be performed in accordance with 49 CFR part 40. Follow-up testing shall not exceed 60 months from the date of the employee's return to duty. The substance abuse professional may terminate the requirement for follow-up testing at any time after the first six tests have been administered, if the substance abuse professional determines that such testing is no longer necessary.

(d) The operator shall ensure that a substance abuse professional who determines that a covered employee requires assistance in resolving problems with alcohol misuse does not refer the employee to the substance abuse professional's private practice or to a person or organization from which the substance abuse professional receives remuneration or in which the substance abuse professional has a financial interest. This paragraph does not prohibit a substance abuse professional from referring an employee for assistance provided through--

(1) A public agency, such as a State, county, or municipality;

(2) The operator or a person under contract to provide treatment for alcohol problems on behalf of the operator;

(3) The sole source of therapeutically appropriate treatment under the employee's health insurance program; or

(4) The sole source of therapeutically appropriate treatment reasonably accessible to the employee.

(1) A public agency, such as a State, county, or municipality;

(2) The operator or a person under contract to provide treatment for alcohol problems on behalf of the operator;

(3) The sole source of therapeutically appropriate treatment under the employee's health insurance program; or

(4) The sole source of therapeutically appropriate treatment reasonably accessible to the employee.

§ 198.245 Contractor employees.

(a) With respect to those covered employees who are contractors or employed by a contractor, an operator may provide by contract that the alcohol testing, training and education required by this subpart be carried out by the contractor provided:

(b) The operator remains responsible for ensuring that the requirements of this subpart and part 40 of this title are complied with; and

(c) The contractor allows access to property and records by the operator, the Administrator, any DOT agency with regulatory authority over the operator or covered employee, and if the operator is subject to the jurisdiction of a state agency, a representative of the state agency for the purposes of monitoring the operator's compliance with the requirements of this subpart and part 40 of this title.

FINDING

Alst. / CFR titles, subtitles, chapters, and parts. Finding Aids volume to the Code of Federal Regulations, published annually.

Material Approved for Incorporation by Table of CFR Titles and Chapters. Alphabetical List of Agencies Appearing in Table of CFR Sections Affected.